



4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2015-0049]

Application of Cargo Preference Requirements to the Federal Ship Financing Program

AGENCY: Maritime Administration, MARAD, Department of Transportation.

ACTION: Notice of Proposed Policy Clarification.

SUMMARY: The Maritime Administration (MARAD) is seeking comments on a proposed policy clarification for the application of the Cargo Preference Act of 1954 (CPA 1954), 46 U.S.C. 55305, to applications, commitments and guarantees under MARAD's Federal Ship Financing Program (Title XI), 46 U.S.C. Chapter 537.

DATES: Comments may be submitted on or before [INSERT DATE 30 DAYS AFTER PUBLICATION].

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2015-0049 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search MARAD-2015-0049 and

follow the instructions for submitting comments.

- *Email:* Rulemakings.MARAD@dot.gov. Include MARAD-2015-0049 in the subject line of the message.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590. To confirm that your comments reached the facility, please enclose a stamped, self-addressed postcard or envelope.
- *Hand Delivery/Courier:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

Note: If you fax, mail or hand deliver your input, you should include your name and a mailing address, an email address, or a telephone number in the body of your document so that you can be contacted if there are questions regarding your submission. If submitting inputs by mail or hand delivery, submit them in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying and electronic filing.

FOR FURTHER INFORMATION CONTACT: Owen J. Doherty, Associate Administrator for Business and Finance Development, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366-9595, owen.doherty@dot.gov.

SUPPLEMENTARY INFORMATION: After review of policies and practices regarding the

application of the CPA 1954 to applications, commitments and guarantees under MARAD's Title XI program, it was determined that applicants often lack a full understanding of those policies and practices, despite the issuance of an earlier policy clarification document (76 FR 37402) in 2011. In response to applicant questions and input from program participants, this proposed policy clarification seeks to explain MARAD practices to better inform those seeking to benefit from Title XI.

Section 1: What is Cargo Preference?

The CPA 1954 mandates that shippers use U.S.-flag vessels to transport a portion of government-impelled, ocean borne cargoes. Through statutory amendments in 2008 to 46 U.S.C. 55305(b), the CPA 1954 was clarified to state that the statute applies whenever the U.S. Government provides financing in any way with Federal funds for the account of any person. MARAD, as the agency charged with implementing and overseeing compliance administration of the CPA 1954, previously determined that "financing in any way" includes Federal loan guarantee programs, such as Title XI.

Section 2: What are the Cargo Preference requirements?

There are both transportation and administrative requirements associated with the CPA 1954:

Transportation: At least 50 percent of the gross tons of the equipment or materials which are transported by ocean under a given Title XI application, letter commitment and guarantee of obligations must be transported on privately-owned commercial vessels of the United States, to the extent those vessels are available at fair and reasonable rates. MARAD defines "gross ton" to mean a metric ton or cubic meter of cargo, by whichever measure the number is greater; that number is the standard by which compliance with the CPA 1954 will be evaluated.

Administrative: For each covered shipment, consistent with 46 CFR 381.3, within thirty (30) days of the foreign export loading, the shipper (Title XI applicant or its representative) must submit a legible copy of a rated on-board ocean master bill of lading to MARAD. This requirement exists whether the particular shipment was transported aboard a U.S.-flag or a foreign-flag vessel. The bills of lading must be submitted to the Office of Cargo and Commercial Sealift, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 or via email to cargo.marad@dot.gov. The bills of lading or the transmittal cover must clearly state the Title XI application or loan guarantee to which they apply and must contain the following information: (1) The name of the vessel carrying the cargo(s); (2) The carrying vessel's International Maritime Organization (IMO) number; (3) The carrying vessel's flag of registry; (4) The date of cargo loading; (5) The port of loading; (6) The port(s) of trans-shipment (if any); (7) The port of final destination; (8) A description of the cargo(s); (9) The gross weight of the cargo(s) in kilograms and the volume of the cargo(s) in cubic meters; and (10) The total ocean freight revenue in U.S. dollars.

Section 3: When do the Cargo Preference requirements begin?

The cargo preference requirements apply as soon as an application is submitted for Title XI financing. The requirements are therefore in place well before a decision is made on a Title XI application, a letter commitment is issued or a guarantee closing takes place. The CPA 1954 will generally apply, particularly for construction-period financing, to all foreign components that are transported by ocean and included in the "Actual Cost" of the project in accordance with 46 CFR 298.13(b). At the outset, all applicants will be required to submit a "transportation plan" for review by MARAD to ensure that sufficient planning has occurred to meet the cargo preference requirements. This requirement will be discussed with each applicant and potential applicant at

the earliest possible time. Additionally, applicants and prospective applicants should discuss their plans to pursue a Title XI guarantee with shipyard constructing the vessel at the earliest possible time to ensure that the shipyard is aware and will comply with the associated cargo preference requirements.

This programmatic administration is necessary to ensure compliance with the CPA 1954. Once MARAD issues a guarantee under Title XI, the “financed” cargoes included in that guarantee are within the meaning of the CPA 1954. However, this can be far too late to ensure compliance with the CPA 1954 requirements. This programmatic administration is similar to the manner in which Federal grants or contracts generally work; that is, if a party seeks reimbursement for an item obtained prior to the execution of a Federal grant or contract, that item still must be compliant with applicable Federal laws, such as the Buy American Act, regardless of the fact that the item had been procured before Federal financing was approved or confirmed.

In the event that a Title XI application is not approved, there are no reimbursements for transportation costs associated with CPA 1954 compliance. Rather it will be a cost associated with pursuing a Title XI loan guarantee.

Section 4: What if an available U.S.-flag vessel cannot be found or the total ocean freight rate appears too expensive?

Only MARAD can issue a determination that no qualified U.S.-flag vessels are available at fair and reasonable rates. If a Title XI applicant, through diligent efforts, is unable to find a U.S.-flag carrier, without prior consultation with MARAD and a determination of non-availability of qualified U.S.-flag carriage, the applicant’s due diligence alone will not excuse

that applicant from cargo preference requirements. Title XI applicants and prospective applicants are encouraged to communicate with U.S.-flag carriers at the earliest possible time to ensure the greatest degree of coordination and to obtain the best rates. In the event that a Title XI applicant or prospective applicant experiences difficulty obtaining U.S.-flag service, or if it can only find partial U.S.-flag service, the applicant is encouraged to contact MARAD as soon as possible at cargo.marad@dot.gov or (202) 366-4610. With proper planning, U.S.-flag service can generally be obtained at fair and reasonable rates. Early planning and coordination are the keys to meeting cargo preference requirements in Title XI as in all other Federal programs.

Section 5: What if non-compliance with Cargo Preference requirements occurs?

At MARAD's option, as the administrator of the Title XI program, non-compliant parties may be denied a letter commitment or, consistent with 46 U.S.C. 55305(d)(2)(B), may be required to provide make-up cargoes for carriage aboard U.S.-flag vessels to offset the lost cargo carriage supporting work under the Title XI financing application. In extreme cases where knowing and willful violations occur, consistent with 46 U.S.C. 55305(d)(2)(C), MARAD can issue a civil penalty of not more than \$25,000 for each violation, with each day of a continuing violation following the date of shipment counting as a separate violation. Additionally, cargo preference requirements are incorporated into Title XI letter commitments; therefore, failure to properly adhere to cargo preference requirements could impact MARAD's ability to close on a Title XI guarantee because the recipient has not met its obligations under the letter commitment. However, with early planning and coordination with MARAD, no cargo preference violations need occur under any Title XI application, letter commitment or guarantee.

Section 6: What is the purpose of Cargo Preference?

The CPA 1954 provides a revenue base that helps to retain and encourages a privately owned and operated U.S.-flag merchant fleet. The U.S.-flag fleet is a vital resource, providing essential sealift capability to globally project and sustain the U.S. Armed Forces or support other national emergencies, maintaining a cadre of skilled seafarers available in time of national emergencies, and helping to protect U.S. economic interests. The U.S. maritime industry also supports thousands of sea-going, shore-based, and secondary, associated jobs, supporting the Nation's economic growth. It is imperative that Federal programs, such as Title XI, and Title XI applicants and beneficiary shipyards, as members of the U.S. maritime industry, support this national priority through proper adherence to cargo preference requirements. Therefore, while the use of U.S.-flag vessels to carry 50 percent of the gross tons of ocean borne cargoes is the statutory minimum, MARAD, as the agency charged with administering both Title XI and the CPA 1954, encourages the use of U.S.-flag vessels more than the minimum whenever possible.

Privacy Act

In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 46 U.S.C. 55305; 46 U.S.C. Ch. 537)

By Order of the Maritime Administrator.

Dated: April 17, 2015.

Thomas M. Hudson, Jr.,

Acting Secretary,
Maritime Administration.

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